

UNITED STATES DISTRICT COURT

for the

FILED

JAN 05 2023

 PETER A. MOORE, JR., CLERK
 U.S. DISTRICT COURT, EDNC
 BY 76 DEP CLK
Joseph T. Carroll, Sr.*Petitioner*

v.

Case No.

5:23-HC-2004-BO
 (Supplied by Clerk of Court)
United States of America*Respondent*

(name of warden or authorized person having custody of petitioner)

PETITION FOR A WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241

Personal Information

1. (a) Your full name: Joseph Theodore Carroll, Sr.
 (b) Other names you have used: None
2. Place of confinement:
 (a) Name of institution: Butner FCI 2
 (b) Address: FCI 2 P.O. Box 1500 Butner, NC 27509
 (c) Your identification number: 48856-509
3. Are you currently being held on orders by:
☒ Federal authorities ☐ State authorities ☐ Other - explain: _____
4. Are you currently:
☐ A pretrial detainee (waiting for trial on criminal charges)
☒ Serving a sentence (incarceration, parole, probation, etc.) after having been convicted of a crime
 If you are currently serving a sentence, provide:
 (a) Name and location of court that sentenced you: United States District Court
Western District of Virginia, Abingdon
 (b) Docket number of criminal case: 1:21CR00030-003
 (c) Date of sentencing: January 14th 2022
☐ Being held on an immigration charge
☒ Other (explain): Unconstitutional criminal conviction /
ineffective assistance of counsel

Decision or Action You Are Challenging

5. What are you challenging in this petition:
☐ How your sentence is being carried out, calculated, or credited by prison or parole authorities (for example, revocation or calculation of good time credits)

- ☐ Pretrial detention
- ☐ Immigration detention
- ☐ Detainer
- ☐ The validity of your conviction or sentence as imposed (for example, sentence beyond the statutory maximum or improperly calculated under the sentencing guidelines)
- ☐ Disciplinary proceedings
- ☒ Other (explain): Actual innocence of 924(c) conviction / ineffective ass. of counsel, Rule 11(c) violation, sentence contrary to U.S.C. § 553 (a) factors, guilty plea not entered knowing and voluntary

6. Provide more information about the decision or action you are challenging:

- (a) Name and location of the agency or court: United States District Court for the Western District of Virginia, Abingdon
- (b) Docket number, case number, or opinion number: 1:21CR00030-003
- (c) Decision or action you are challenging (for disciplinary proceedings, specify the penalties imposed):
See Attachments

(d) Date of the decision or action: January 14th 2022

Your Earlier Challenges of the Decision or Action

7. First appeal

Did you appeal the decision, file a grievance, or seek an administrative remedy?

☐ Yes ☒ No

(a) If "Yes," provide:

- (1) Name of the authority, agency, or court: _____
- (2) Date of filing: _____
- (3) Docket number, case number, or opinion number: _____
- (4) Result: _____
- (5) Date of result: _____
- (6) Issues raised: _____

(b) If you answered "No," explain why you did not appeal: Attorney never filed notice of appeal . Nor did counsel even offer to file a notice of appeal .

8. Second appeal

After the first appeal, did you file a second appeal to a higher authority, agency, or court?

☐ Yes ☐ No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court: _____

(2) Date of filing: _____

(3) Docket number, case number, or opinion number: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

(b) If you answered "No," explain why you did not file a second appeal: _____

9. **Third appeal**

After the second appeal, did you file a third appeal to a higher authority, agency, or court?

☐ Yes

☐ No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court: _____

(2) Date of filing: _____

(3) Docket number, case number, or opinion number: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

(b) If you answered "No," explain why you did not file a third appeal: _____

10. **Motion under 28 U.S.C. § 2255**

In this petition, are you challenging the validity of your conviction or sentence as imposed?

☒ Yes

☐ No

If "Yes," answer the following:

(a) Have you already filed a motion under 28 U.S.C. § 2255 that challenged this conviction or sentence?

☐ Yes

☒ No

If "Yes," provide:

- (1) Name of court: _____
 - (2) Case number: _____
 - (3) Date of filing: _____
 - (4) Result: _____
 - (5) Date of result: _____
 - (6) Issues raised: _____
- _____
- _____
- _____

- (b) Have you ever filed a motion in a United States Court of Appeals under 28 U.S.C. § 2244(b)(3)(A), seeking permission to file a second or successive Section 2255 motion to challenge this conviction or sentence?

☐ Yes ☒ No

If "Yes," provide:

- (1) Name of court: _____
 - (2) Case number: _____
 - (3) Date of filing: _____
 - (4) Result: _____
 - (5) Date of result: _____
 - (6) Issues raised: _____
- _____
- _____
- _____

- (c) Explain why the remedy under 28 U.S.C. § 2255 is inadequate or ineffective to challenge your conviction or sentence: 2241/2255 however the court construes this motion we have full faith in the court's discretion .
- _____
- _____
- _____

11. **Appeals of immigration proceedings**

Does this case concern immigration proceedings?

☐ Yes ☐ No

If "Yes," provide:

- (a) Date you were taken into immigration custody: _____
- (b) Date of the removal or reinstatement order: _____
- (c) Did you file an appeal with the Board of Immigration Appeals?
☐ Yes ☐ No

If "Yes," provide:

- (1) Date of filing: _____
- (2) Case number: _____
- (3) Result: _____
- (4) Date of result: _____
- (5) Issues raised: _____

(d) Did you appeal the decision to the United States Court of Appeals?

☐ Yes ☒ No

If "Yes," provide:

- (1) Name of court: _____
- (2) Date of filing: _____
- (3) Case number: _____
- (4) Result: _____
- (5) Date of result: _____
- (6) Issues raised: _____

12. **Other appeals**

Other than the appeals you listed above, have you filed any other petition, application, or motion about the issues raised in this petition?

☐ Yes ☒ No

If "Yes," provide:

- (a) Kind of petition, motion, or application: _____
- (b) Name of the authority, agency, or court: _____

(c) Date of filing: _____

(d) Docket number, case number, or opinion number: _____

(e) Result: _____

(f) Date of result: _____

(g) Issues raised: There was a sentencing memorandum filed at the original sentencing hearing outlining overwhelming mitigating factors under U.S.C. 3553(a) that were not adequately considered .

Grounds for Your Challenge in This Petition

13. State every ground (reason) that supports your claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground. Any legal arguments must be submitted in a separate memorandum.

GROUND ONE: Actual innocence of possessing a firearm in the furtherance of a drug trafficking crime Section 924(c). The firearm was not visible nor accessible to defendant nor was there any ammunition to the firearm any where in the home. With fused wrist def. cannot handle a handgun.

(a) Supporting facts (Be brief. Do not cite cases or law.):

There was no ammunition to this firearm in the gun or anywhere in the home. Mr. Coarrol's wrist is fused together from a car accident and he can not handle a handgun or brandish it. See medical records. Plus this firearm was buried under a pile of clothes and could not be seen by customers and if they would have seen it they would see it was empty.

(b) Did you present Ground One in all appeals that were available to you?

☐ Yes

☒ No

GROUND TWO: Ineffective Assistance of counsel. Mr. Carroll expressly and unequivocally retained the right to raise an ineffective ass. of counsel claim in his plea agreement. Mr. Carroll's attorney failed to investigate multiple defenses and medical conditions that confirmed same

(a) Supporting facts (Be brief. Do not cite cases or law.):

Mr. Carroll's attorney Charles Bledsoe never requested his medical records showing that his wrist is fused and that because of his "gimp" hand he can not handle, hold or brandish a handgun. He can barely move his hand. In the correspondence between Mr. Carroll and his attorney you can see where Mr. Carroll is disagreeing with the "gun charge" See Attachments

(b) Did you present Ground Two in all appeals that were available to you?

☐ Yes

☒ No

GROUND THREE: Mr. Carroll's attorney failed to investigate adequately a coercion/duress defense as Mr. Carroll's co-defendant Mr. Desorcey was extremely violent and was just released from prison for murder less than a year before Mr. Carroll met him and Mr. Carroll did not know that

(a) Supporting facts (Be brief. Do not cite cases or law.):

at the time he rented him a spare room in his house separated by a divide Mr. Desorcey also threatened Mr. Carroll multiple times and the U.S. Marshals had to move Mr. Carroll to a separate jail from Mr. Desorcey due to his threats.

(b) Did you present Ground Three in all appeals that were available to you?

☐ Yes

☐ No

GROUND FOUR: Mr. Carroll was sentenced contrary to the U.S.C. 3553(a) factors. The mitigating circumstances were not legally considered adequately in that Mr. Carroll was 44 years old facing a mand. min. sentence of 15 years was under coercion, mildly retarded with addiction.
(a) Supporting facts (Be brief. Do not cite cases or law.):

The mandatory min. of 15 years would have put Mr. Carroll out of prison at almost 60 years old but instead the court sentenced Mr. Carroll to 25 years which puts him out of prison when he is nearly 70 years old. This is unfair considering his history of mental illness, low IQ, and lack of criminal history, sub. abuse issues triggered by the loss of Mr. Carroll's son and verified coercion/threats from co-defendant.

(b) Did you present Ground Four in all appeals that were available to you?

☐ Yes

☒ No

14. If there are any grounds that you did not present in all appeals that were available to you, explain why you did not: Mr. Carroll's attorney never filed notice of appeal. Nor did Mr. Carroll's attorney ask Mr. Carroll if he wanted to him to file a notice of an appeal. Nor was Mr. Carroll told that he would have to file a notice of appeal on his own without representation of counsel.

Request for Relief

15. State exactly what you want the court to do: Mr. Carroll respectfully requests the court to vacate his sentence and guilty plea and appoint him counsel to represent him on this proceeding due to his mental health disabilities and his low IQ and lack of experience with the legal system as he has no substantial crim. hist. to give him any experience with the legal system and his long medical history.

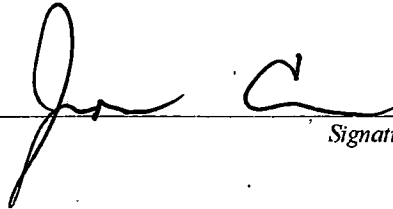
Declaration Under Penalty Of Perjury

If you are incarcerated, on what date did you place this petition in the prison mail system:

I declare under penalty of perjury that I am the petitioner, I have read this petition or had it read to me, and the information in this petition is true and correct. I understand that a false statement of a material fact may serve as the basis for prosecution for perjury.

Date:

12-22-22



Signature of Petitioner

Signature of Attorney or other authorized person, if any

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